



**The Comptroller General
of the United States**

Washington, D.C. 20548

Kennedy - PL

Decision

Matter of: Castle/Division of Sybron Corporation

File: B-228654

Date: October 9, 1987

DIGEST

1. Requirement for sterilizers with radial arm door design is not unduly restrictive where this door design is required because it has the capability to control dangerous leaks and the protester has not shown that other designs can meet this need.
2. Protester's interest in benefiting from more restrictive specifications is not protestable under General Accounting Office bid protest function.

DECISION

Castle/Division of Sybron Corporation protests the award of any contract under invitation for bids (IFB) No. F02604-87-B-0037, issued by the Department of the Air Force on a "brand name or equal" basis for hospital sterilizers. Essentially, Castle alleges that the IFB requirements were designed for a specific vendor--American Sterilizer Company (AMSCO)--the brand name manufacturer and, therefore, are unduly restrictive of competition. The Air Force has postponed bid opening pending the resolution of this protest.

We deny the protest.

The IFB contained the standard brand name or equal clause which advised bidders that equipment equal to the specified AMSCO sterilizers would be considered for award if such equipment was determined to meet the salient characteristics listed in the IFB.

In its challenge of the salient characteristics, Castle contends that several specifications are restrictive because they were allegedly written to describe AMSCO products so that "only AMSCO can comply with every solicitation requirement." Castle argues that the requirement for sterilizers with "hinged radial arm doors which would allow the operator

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to increase pressure on the seal while pressure is in the chamber" (while the sterilizer cycle is running), is restrictive and not essential for sterilizers to properly function. Castle manufactures a sliding door sterilizer and states that the requirement for the radial arm door eliminates the firm from competing under this solicitation.

The Air Force states that radial arm door designs are required because this type of door can be tightened (pressure can be applied) to stop and seal out steam or ethylene oxide leaks during the operation of the sterilizer. The Air Force explains that nonradial arm door sterilizers as manufactured by the protester, do not have the capability to tighten the seal and thus control leaks. As a result, the Air Force reports that nonradial arm door models have suffered leaks from gasket ruptures and weld failures which endanger the safety of operating personnel. Also, the Air Force states that if leakage cannot be stopped, the sterilizer cycle must be rerun.

The protester responds that the sliding door sterilizer manufactured by Castle is designed to provide a "positive seal" each time the door is closed, eliminating the need to tighten the door to stop leaks. Further, Castle argues that leakage is an inherent characteristic of the radial arm door design sterilizer and that "to the best of its knowledge, there has not been a gasket rupture causing leakage on a nonradial arm door design sterilizer." The protester maintains that its sterilizer is designed in such a fashion that a gasket cannot "blow." In any event, the protester states that if a leak is discovered, increasing pressure on a cycle in progress can only solve equipment problems temporarily because applying such pressure results in gasket compression and a shortening of the gasket life. The protester thus maintains that when a leak is discovered, the cycle should be shut down until repairs can be made.

A protester who objects to the specifications in an invitation for bids bears a heavy burden. This is because we have recognized that government procurement officials, who are familiar with the conditions under which supplies, equipment or services have been used in the past, and how they are to be used in the future, are generally in the best position to know the government's actual needs, and, therefore, are best able to draft appropriate specifications. Lanier Business Products, Inc., B-193693, Apr. 3, 1979, 79-1 C.P.D. ¶ 232. Therefore, the drafting of proper specifications, including the use of "brand name or equal" purchase descriptions, to meet the requirements of the government and the factual determination as to whether any product offered thereunder conforms to the specifications, are matters primarily within the jurisdiction of the procuring activity. It is proper

for a contracting agency to establish specifications reflective of its legitimate needs based on its actual experience, engineering analysis, logic or similar rational bases. We do not undertake to substitute our judgment for that of the agency in the absence of a clear showing of abuse of the discretion permitted it, and we will accept the judgment of the technical personnel of the agency involved where there is a difference of expert technical opinion, unless such judgment is shown to be clearly and unmistakably in error. American Sterilizer Co., B-202096, Sept. 4, 1981, 81-2 C.P.D. ¶ 198.

In our opinion, the Air Force has made a prima facie showing that the protested specifications are reasonably related to its needs. Once the agency has established this prima facie support for its determination of its minimum needs, the burden is on the protester to show that the requirements are clearly unreasonable. See Nupla Corp., B-225545, Mar. 6, 1987, 87-1 C.P.D. ¶ 264. We find that Castle has not carried the burden of proving its case here.

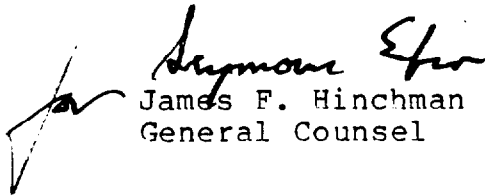
While the protester asserts that its sliding door model sterilizer offers a "positive door seal" eliminating the need to tighten the door and that its equipment is designed so that a gasket cannot "blow," the Air Force reports that it has had gasket rupture problems resulting in leaks with sliding door models and does not want to accept further risk of this type. We cannot find that the Air Force is required to accept a potentially more hazardous design where its experience shows that a safer design is available. See Nupla Corp., B-225545, supra. Further, the protester acknowledges that although its model is designed to provide a positive seal each time the door is closed, its design might experience leaks. The protester advises that when this occurs, the solution is to shut down its machine until repairs can be made which, the protester states, would preserve the gasket life. However, the Air Force responds that the radial arm door allows the user to stop the leak without shutting down operations. We cannot say this need is unreasonable. See UNICO, Inc., B-217255, Aug. 7, 1985, 85-2 C.P.D. ¶ 138.

Castle also has raised various other objections to the brand name specifications. The protester argues that the requirement that sterilizer controls not be mounted over the door, and requirements for two ply print out paper, same day repair service and specified water consumption are also restrictive. We need not consider these allegations because even if we decided these issues in Castle's favor, the firm,

by its own admission, would be ineligible for award under our above finding. Pacific Corp Capital, Inc., B-227822, July 31, 1987, 87-2 C.P.D. ¶ ____; Small Business Systems, Inc., B-213009, July 26, 1984, 84-2 C.P.D. ¶ 114.

Finally, Castle believes that the Air Force should incorporate additional features which it believes would enhance equipment performance and safety. Castle is in effect arguing that the specifications should have been more restrictive, rather than less. However, our Office will not consider the merits of such an allegation, since our role in resolving bid protests is to ensure that statutory requirements for full and open competition have been met. American Sterilizer Co., B-223493, Oct. 31, 1986, 86-2 C.P.D. ¶ 503. Since the Air Force has determined that the current specifications meet its minimum needs, and because the protester's interest in benefiting from more restrictive specifications is not protestable under our bid protest function, we will not consider this basis of protest further.

The protest is denied.


James F. Hinchman
General Counsel